

## GROUP 2

### ACCESS TO JUSTICE FOR ALL IN THE CRIMINAL JUSTICE SYSTEM

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## I. INTRODUCTION

On September 25, 2015, world leaders from 193 countries met in Doha, Qatar for the United Nations Summit to discuss a set of new goals which built on the Millennium Development Goals and complete what they did not achieve. The countries adopted 17 objectives to end poverty, protect the planet and ensure prosperity for all as part of a new sustainable development agenda.<sup>1</sup> Included in the 17 goals<sup>2</sup> was goal 16 on “Peace, Justice and Strong Institutions”.

Goal 16 of the Sustainable Development Goals is dedicated to the *promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable and inclusive institutions at all levels*. Under Goal 16, objective 16.3 sets out one target to “Promote the rule of law at the national and international levels and ensure equal access to justice for all.”

As part of UNAFEI's 168<sup>th</sup> International Senior Seminar, the participants were allocated into groups to discuss particular topics under the overall theme of *Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice*. In this discussion paper, the group was assigned the topic of “Easy access to justice for all, including vulnerable persons”.

### A. Understanding the Definition of Access to Justice

The group's consensus was that the discussion would be focused on access to justice for victims of crime and the public. Here when we refer to the “public”, it is to those who may be affected by crimes that may not have a specific victim, such as tax fraud and corruption cases. So the group settled on the overall topic of “Access to Justice for All in the Criminal Justice System from the Perspective of the Victim”.

How does a member of the public or a victim report a crime? What is the process to arrest the perpetrator? What are the institutions involved in the criminal justice system? What is easy access to the criminal justice system?

The group had defined access to justice to include the victim reporting a complaint to the law enforcement and the law enforcement officials giving out information. Justice is to put things back in the previous state to the extent possible. For the purpose of criminal justice it is to punish the accused and importantly to offer a remedy to the victim. From a police investigator's perspective, what victims want is recovery but most have the expectation for the police to catch and arrest the offender.

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<sup>1</sup> [www.un.org/sustainabledevelopment/sustainable-development-goals/](http://www.un.org/sustainabledevelopment/sustainable-development-goals/)

<sup>2</sup> Sustainable Development Goals - No poverty; Zero hunger; Good health and well-being; Quality education; Gender equality; Clean water and Sanitation; Affordable and clean energy; Decent work and Economic growth; Industry, Innovation and Infrastructure; Reduced Inequalities; Sustainable Cities and Communities; Responsible Consumption and Production; Climate Action; Life below water; Peace, Justice and Strong Institutions and Partnerships for the Goals.

When we refer to the criminal justice system, we refer to the police, prosecution, the judiciary, probation and corrections.

### **B. Why is It Necessary for the Public to Have Access to Justice?**

Modern societies have avoided violence as a way of dispute resolution by establishing a judicial system based on an independent judicial power that will decide the questions submitted to it according to the legislation and the evidence provided by the parties. In order to settle its conflicts and disputes through this rational procedure, the citizens must have the power, the ability and the means to take their issues to the Courts.

In the field of criminal law in which the acts are more seriously threatening and affect the society, access to justice is especially relevant. Indeed, victims have suffered the burdens of the criminal act and depend upon the courts to punish their aggressors and to receive compensation for their losses.

Although generally granted in the various constitutions and national legislation, this right to access the judicial system must be ensured by the governments through practical measures that materialize the formal right. If the general population is deprived of this fundamental right – be it by financial, material or legal reasons – it may need to resort to force to satisfy its needs or simply renounce them.

Access to justice is the beginning of a process that will lead to subsequent investigation and eventual victim support. Having basic information of the criminal justice system will enable a person to make better informed decisions, understand the process of identifying wrongs committed against him or her and finding a remedy. The criminal justice system exists to address those breaches and provide a form of punishment to the wrongdoer. In the absence of access to justice, people are unable to have their voices heard, exercise their rights, or challenge discrimination.<sup>3</sup>

The rule of law is rendered meaningless if the general public is unaware of their rights, unaware of the process through which groups and individuals can vindicate their rights and has insufficient access to the justice system. Therefore, understanding and participation of the general public is required.

The General Assembly of the United Nations approved in December 2012 a resolution adopting the United Nations Principles and Guidelines on Access to Legal Aid in the Criminal Justice System. According to Principle 4, “without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime”.

Considering that many countries still lack the resources and capacity to provide legal aid, the resolution encourages the States to “recognize and encourage the contribution of lawyers’ associations, universities, civil society and other groups and institutions in providing legal aid” and to establish public-private and other forms of partnership to extend the reach of legal aid.

Guideline 9 refers to the implementation of the right of women to access legal aid and encourages the States to introduce an active policy of incorporating a gender perspective into all policies, law, procedures, programmes and practices relating to aid to ensure gender equality and equal and fair access to justice.

Access to justice is recognised as a global challenge; hence its significance being captured in the United Nations Sustainable Development Goals. It is true to say that crime affects prosperity both at the national and international levels, and therefore it is necessary to be addressed in taking steps to achieve the SDGs.

## **II. CURRENT SITUATION IN PARTICIPATING COUNTRIES**

### **A. Brazil**

The Brazilian Constitution ensures the right to access to justice whenever someone has been affected in his/her rights. However, this formal constitutional provision does not solve the problem by itself.

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<sup>3</sup> [www.un.org/ruleoflaw/](http://www.un.org/ruleoflaw/)

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Victims are an especially vulnerable group. Unfortunately, the Brazilian criminal process and its main participants still see the victim as someone who will provide evidence and help the conviction of the defendant. Recent changes in criminal procedure, however, made it easier for the repayment for losses, damages or expenses that result from a crime.

In Brazil there is a national public institution, the public legal defence, which provides legal support to all. However, not all cities have public legal defence offices and even where there are, in some cases, they still lack the structure and the number of lawyers required to provide legal assistance to the general population. In the places where there is a shortage of means, priority is given to poor defendants.

#### **B. Cote d'Ivoire**

The Ivoirian government, along with the United States of America, has identified that judicial reform is central to the reconstruction process of the criminal justice system. This has resulted in the *ProJustice* project. The goal of this project is to make the justice sector more effective, accessible and equitable through a robust training programme targeting key actors in the justice sector, equipment support and infrastructure rehabilitation. The focus of this project is to improve the existing justice system and facilitate access to justice by strengthening legal aid resources and creating a broad information campaign to help public understanding of the judicial system. The project also provides for and upgrades infrastructure and equipment to increase the effectiveness and output of specialists working in the judicial sector. There are judicial officials known as *Gendarmerie* who use motor bikes to go to rural areas and assist the community with law enforcement. In Cote d'Ivoire to address the issue of access to justice, with the assistance of JICA, a call centre or hotline was set up. There is also the use of brochures such as *Allo Justice*.

#### **C. Japan**

Japan has comprehensive systems that enable access to justice for its citizens. It introduced new legislation to promote and facilitate access to justice for their people including establishing the Japan Legal System Center (JLSC). It provides legal aid services and a support system to the victim from investigation through prosecution and trial. The JLSC is based on the goal to realize a society where legal information and services are accessible anywhere in the country.

The public prosecutors' office provides victim support to reduce trauma and bad experiences of children. The measure of victim support has been introduced through various materials such as brochures placed at public offices. It also has in place a victim notification system by which the victims are informed about the case. The Victim Notification System provides such information as the disposition of the case, the outcome of the trial, treatment of the perpetrators in prison and the time of their release to the extent possible.

It also has the Koban system, which is a police box located in the communities where police officers work on shifts. This makes it easier for the public to have access to the police. Japan also has a strong law-related education programme which is included in the school curriculums where children are taught rules and the legal system.

#### **D. Lao PDR**

The Ministry of Justice in partnership with the Asia Foundation have established three legal aid clinics located in Oudomxai (north), Vientiane (central) and Champasak (south). These clinics focus on providing legal aid to poor and vulnerable people, especially women, children, and minority populations.

There is training of citizens to become paralegal resource people within their communities. These volunteers operate as mobile paralegal units, which, in collaboration with the Bar Association, are currently undertaking community legal education activities across eight provinces. The LBA has produced several easy to understand brochures and posters on legal aid and legal education that were disseminated widely, including to villagers, judges, prosecutors, and the police. Village Mediation Units operate under the auspices of the Ministry of Justice and are designed to address conflicts at the community level through negotiation and the law.

#### **E. Maldives**

The Maldives Constitution clearly states that every citizen must have equal rights and equal access to justice. The Child Protection Act and the Domestic Violence Act protect the rights of the children and

women who are most vulnerable. Free Medical treatment and counselling to victims is mandatory. But as a small island nation and due to geographical situations, access to justice and medical facilities to people living on remote islands is a huge challenge.

Another challenge is the lack of awareness of the people living in these communities. To tackle these problems crime prevention committees are established in every atoll and crime reporting measures are made accessible through different means, such as through the use of hotline numbers, email, by messaging, letters etc. Currently, crime prevention committees are established in every atoll. The members of the committee are elected from the public. They work together with law enforcement agencies to prevent crime by carrying out awareness programmes on the islands targeting the children, parents and the general public. Another good practice is door-to-door policing. Police officers carry out door-to-door activities on remote islands. By visiting homes, the police are able to get feedback from the public and take measures to improve the system.

#### **F. Papua New Guinea**

Access to justice services are still a challenge in Papua New Guinea. The Constitution provides for the right to the protection of the law but this mainly applies to those arrested and charged with criminal offences. There is no specific legislation on access to criminal justice. The police have a significant role in access to justice but suffer the challenges of manpower and lack of resources. Hence the establishment of a community police system in the villages. The Courts through the Chief Justice in the last three years have embarked on a mission of bringing the courts to the people and promoting legal awareness through court circuit sittings in the districts. The judges, prosecutor, public solicitor and police officers would go on circuit to the district level and deal with cases from that district, giving the people an opportunity to see the criminal justice system in action.

#### **G. Sri Lanka**

The Sri Lanka Constitution defines the right to access to justice for all. The legal aid system in Sri Lanka is governed by the Legal Aid Act No 22 of 1979 which provides:

- Establishment of the legal aid commission
- Grants of assistance to deserving persons
- Branches for legal aid set up island wide
- Set up a legal aid branch in every magistrate/district court (judicial zone)
- Legal aid officers appear for litigants in all courts
- Poor aggrieved parties have access to guidance, legal representation, both civil and criminal
- Accused have free legal representation in high courts

Most people go to the police, and they have built up trust among the community. There is a 24-hour hotline (119) which the public may access. Community policy committees have been established in 14,022 villages; however, police stations lack facilities for women and child protection bureaus. A National Child Protection Authority has already been established. There is law-related education for the children, which is still primitive and may not be effective in the long term. Law-related education should be implemented in the schools initiated by the Japanese government and which are intended for a long-term basis.

#### **H. Thailand**

Access to justice is a fundamental right guaranteed by the constitution as well as the rights to free compulsory education of which the curriculum covers legal education. However, for those in remote areas, the limit of education due to communication and transportation especially for the ethnic minority, misunderstanding of criminal justice, lack of resources and lower income are obstacles to access to justice, as well as gender and issues impacting vulnerable groups.

The right to legal aid has been recognized on a non-discriminatory basis as well as the rights to remedies for victims from defendants and public funds. Victims have rights to be informed. Legal education and legal aid, facilities, infrastructure, budget, resources as well as the contribution of each part of the society are all necessary to ensure the fair, humane and efficient justice system on both the national and international levels.

### III. CHALLENGES OF ACCESS TO CRIMINAL JUSTICE

The group had identified the following as challenges of access to justice by the public.

#### **A. Access to Police Stations and Facilities**

The location of a police station is a challenge for the public. Some police stations are not conveniently located for rural areas and the environment in the station either in the urban or rural areas can be stressful or hostile. Further there may not be proper interview rooms, for example, rooms to record a child witness's statement or to interview a juvenile offender.

#### **B. Legal Expenses for the Victim.**

Legal advice and representation does not come cheap for most victims. Most people who need such services are mainly those who do not have the financial capacity to pay for it. Though most countries have the government-sponsored legal aid clinics or public solicitors' offices, they may not be located nationwide and have a lack of manpower to meet the demands.

#### **C. Inefficiency and Lack of Trust in the Criminal Justice System**

Some people have had bad experiences with the police in that they were not treated well by the officers or their cases were not handled well. In addition, there remains a general public perception of the inefficiencies of the criminal justice system.

Some police officers are not very friendly. In some countries, the public do not have a lot of trust in the police so sometimes they go straight to the public prosecutor or worse they do not report at all.

There is secondary victimization when people have to go to the police station, the public prosecutor's office or the courts and have to tell too many officers their story or are treated disrespectfully. This leaves an uncomfortable feeling for the victims.

#### **D. Lack of Information of the Prosecution, Judgement and Sentence**

One of the challenges the group discussed was the lack of information for the victims of crime. For instance once the complaint of a crime is made and the case is ready for prosecution, the victims are not aware or informed until the trial date. They may not have any say in how the case is handled and sometimes are never informed of the outcome of the case. If the offender is found not guilty, they are also not informed or it may not have been explained why the offender was released. If the offender is sentenced, the victims are not informed about the length of the sentence and the date of release for the offender.

#### **E. Cooperation between Criminal Justice Agencies and Other Professions**

Another challenge identified is the absence of a mechanism between different professions and criminal justice agencies. This may occur where a complaint of abuse is made by a child to either a teacher or child consultant; or when a medical doctor through medical examination finds out that the person may be subject to abuse but may not report because of this.

#### **F. Information or Knowledge about the Criminal Justice System**

The insufficiency of the information and knowledge about the criminal justice system is a challenge in achieving equal access to justice for the public. From the different countries' discussions on the challenges in their respective countries, there is a recurring issue of the lack of basic information about the criminal justice system. Law-related or moral and civic education is not compulsory in the education system for most countries<sup>4</sup>.

#### **G. Attitude and Community Pressure**

There are some countries where there is community pressure not to report a crime especially where the suspect may be a prominent person in the community. Sometimes it is because the victim is afraid of the suspect because either there is fear of, or threats from, the suspect. In cases which involve fraud or corruption-related complaints, people may refuse to lodge a complaint or report the matter to the police

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<sup>4</sup> Except in Japan, Thailand, Cote d'Ivoire where law-related or moral and civic education is compulsory.

because of political reasons or job security. There could also be out of court settlements in some cases and so there is pressure to not report to the formal system because the matter has been settled out of court. Not having the proper information or access to justice may leave a lot of unreported crimes and silent victims.

#### **H. Access to Justice is Not a Priority**

Access to justice is a topic that many in leadership may not consider to be a high priority because it does not give immediate results in election campaigns or winning of votes as opposed to health or education. On the other hand, policymakers may not view the subject as a priority. Hence no emphasis is placed on access to justice and allocation of resources.

### **IV. EXAMPLES OF GOOD PRACTICE**

The good practices that the group identified that may be useful in addressing the issue of access to justice for all may be in the form of long-term plans and legislative effects on access to justice. In some countries, the constitution or national legislation may have provisions providing for access to justice while others have none.

#### **A. Women only Police Stations**

The group identified the use of women only police stations in Brazil as a good practice for addressing the barriers to access to justice for women and children in reporting crimes. Every city in Brazil that has more than 100,000 inhabitants has at least 1 women only police station. All cases from these police stations go to a specialized court, which also has specialized prosecutors. All officers at these police stations are female police officers and have specialized officers such as psychologists or social workers. It has made a huge impact in that more women are coming out to report and are treated well unlike before when they were not treated well. In fact, this example of women only police stations would be consistent with Guideline 9 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

#### **B. Legal Support Centres for Victims**

The Japanese Legal Support Centre provides information concerning the legal system, such as procedures to participate in the criminal proceedings as the victim of crime or to recover damages and reduce pain and suffering<sup>5</sup>.

#### **C. Forensic Interviewing**

Another good practice used in Japan is forensic interviewing, which is an approach in interviewing that aims to elicit factual information from child witnesses or child victims without leading or biasing a child. This practice is used in Japan and Thailand as a form of interviewing using open-ended questions and getting the child to give his or her statement in relation to the crime. This interview is recorded on a DVD so it may be used in the prosecution of the case. It is intended to reduce the mental stress on the child in having to repeat his or her story so many times to too many people.

#### **D. Information Brochures**

Another simple practice of providing basic information which was considered a good practice and which is still effective is having brochures or pamphlets with information about access to justice. One example is a brochure prepared by the Japanese police providing information on human trafficking with a hotline number. These are simple but effective methods of disseminating information on the criminal justice system and how one can access the system.

#### **E. Legal Aid Clinics**

The establishment of legal aid clinics or *clinic juridique* as in the example of Lao PDR and Cote d'Ivoire where people can go for basic information about the law and also where they can then be referred to the appropriate criminal justice agency or other legal organization that may adequately assist them.

The Office of Civil Rights Protection and Legal Aid of the Attorney General in Thailand may provide a free litigator called a volunteer lawyer. Access of justice also extends to the availability of dispute settlement, since the public prosecutor's office of Civil Rights Protection and Legal Aid performs free mediation services

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<sup>5</sup> Japan Legal Support Centre, July 2014.

upon the request of members of the public on a voluntary basis.

Another good example that may be practical is legal aid by the office of the attorney general including the provision of advice to those who walk-in to the office, by telephone, letter, facsimile, email, or by public prosecutors who travel to rural areas and set up a contact centre in a municipal office which can direct the people by paying a visit to provide legal knowledge or have the municipal staff direct the people in need of assistance to the public prosecutor's office by Skype or by driving them to the prosecutor's office.

#### **F. Law-related Education**

In Japan, law-related education is promoted and is implemented at all levels of the educational system. This is a good practice that has encouraged the development of the culture of lawfulness, hence contributing to make Japan one of the safest countries in the world. In Thailand the Office of the Attorney General has regularly conducted the training for empowerment of the public and to promote responsible civil society conducted in cooperation with the education sector, *i.e.*, schools and universities.

#### **G. Participation of Civil Society**

In Thailand, the private sector such as the Thai Women Lawyer Association provides free legal advisory services to people as well as shelter for short-term stays of women in emergency cases.

#### **H. Alternative Dispute Resolution**

The Thai government supports restorative justice and alternative dispute settlement, especially mediation. Public prosecutors conduct training on mediation to build capacity of the heads of villages throughout the country so that they can understand and mediate the disputes at the first stage. In the large scale or criminal-related offences, they can refer the case for mediation by the prosecutors including for mitigating the cases.

### **V. RECOMMENDATIONS**

After having considered the significance, the challenges and some good practices in some of the participating countries of access to justice, the group considered that access to justice is vital to the criminal justice system and the rule of law.

The following recommendations were suggested in response to the challenges:

#### **A. Access to Police Stations and Facilities**

- Improving the location and facilities of the police stations by bringing them to the communities, *e.g.*, establishing community policing in villages and rural areas.
- Improving methods of reporting crimes by the public through the use of the internet, telephone hotlines or other channels and keeping confidentiality when necessary.
- Establishing women only police stations for domestic violence cases.

#### **B. Legal Expenses for the Victim**

Expanding the use of legal aid and legal support centres for victims.

#### **C. Inefficiency and Lack of Trust in the Criminal Justice System**

- Increase and improve the training of criminal justice agents including forensic interviewing in order to enable them to deal with victims of sexual crimes, children and vulnerable people.
- To have internal supervision of the cases and conduct of officials to maintain good public relations with people who interact with the criminal justice system.
- Create manuals or standard operating procedures and follow-up training for police officers on those manuals.
- Getting regular feedback from victims/complainants after the completion of the case on (a measure

of access to justice/quality of service provided) capturing the service of the different agencies in the system, *e.g.*, feedback boxes or forms, email or websites.

- Improving the efficiency of the system by declining and suspending criminal cases after proper assessment and informing the complainant.
- Establishing an Independent Integrity Commission that could be another avenue for the victims or the public to raise complaints and review the conduct of officers within the criminal justice agencies. The Commission could comprise members from the private sector, attorneys, academia and government officials.

#### **D. Lack of Information of Prosecution, Judgement and Sentences**

- Establishing a Victim Notification Mechanism to improve efficiency in the response and confidence in the criminal justice system.
- Improving the efficiency of the system by declining and suspending criminal cases after proper assessment and informing the complainant.
- Getting regular feedback from victims/complainants after the completion of the case on (a measure of access to justice/quality of service provided) capturing the service of the different agencies in the system, *e.g.*, feedback boxes or forms, email or websites.

#### **E. Cooperation between Criminal Justice Agencies and Other Professions**

By establishing networks/frameworks and channels of communication between criminal justice agencies and relevant professionals.

#### **F. Information and Knowledge of the Criminal Justice System**

Promoting the work of the police and the criminal justice system through campaigns, the use of the media and distributions of informative materials, brochures, pamphlets, posters etc. to the public and placing these materials in public places.

#### **G. Attitude and Community Pressure**

- Improving methods of reporting crimes by the public through the use of the internet, telephone hotlines or other channels and keeping confidentiality when necessary.
- Promoting legal education both in schools and communities.

#### **H. Access to Justice is Not a Priority**

By using marketing strategies to promote the importance of access to justice for all in accordance with the international standards and norms, including by identifying the organization responsible for the implementation of the SDGs and working in coordination to promote access to justice.

## **VI. CONCLUSION**

Access to criminal justice by the public is fundamental to the rule of law. The current situation in each of the participants' countries exemplifies the limitations and difficulties for victims in accessing the criminal justice system. The challenges include the lack of legal education; the infrastructure of criminal justice agencies; inefficiency and lack of trust in the criminal justice system; attitude and community pressure over the victims; poverty; and lack of political priority. In order to overcome these challenges, good practices were observed in the participants' countries that may be generally adopted. Based on these good practices, recommendations were made to facilitate access of victims to the criminal justice system. To implement these recommendations, it is necessary to secure budgets that are based on effective data analysis and proper record management.